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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/316,990	05/24/1999	STEPHEN M. MEGINNISS III		8550

24737 7590 10/20/2004

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/316,990	MEGINNISS ET AL.	
	Examiner	Art Unit	
	Fenn C Mathew	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 9-19 is/are pending in the application.
- 4a) Of the above claim(s) 10, 11 and 15-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9, 12-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-5, 9, and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guiliani (U.S.) 5,189,751 in view of Michaels (U.S. 5,040,260) and further in view of Roberts (U.S. 5,987,688). Guiliani discloses a driver assembly (24), a vibrating stimulator assembly (14) causing random movement and having a resonant frequency similar to the drive frequency (col. 4, line 54), the resonant frequency increasing under load (col. 9, line 38), base portion (15), and fingers (18). Guiliani shows a 150-400 Hz range, but does not include the range from 40-149 Hz. Such a limitation is considered a matter of obvious design choice based on user preference and within the knowledge of the skilled artisan to suit various applications. Guiliani lacks stimulators as claimed by the applicant. Michaels teaches a tooth cleaning and massaging device, and teaches that elastomeric members may be substituted for bristles as well as the advantages of elastomeric members. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to substitute the bristles of Guiliani for the elastomeric members of Michaels. Michaels fails to teach the specific properties of the elastomeric members. Roberts teaches in an analogous device elastomeric stimulators with rounded tops, and cross sectional diameter in the range of 0.06 to 0.25 inches (col. 4, lines 24-26) and a shore A hardness preferably ranging from 35-55 (col. 4, lines 29-30). It would have been obvious to the skilled

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artisan to have the elastomeric members have the aforementioned properties in view of the teachings of Roberts for their superiority in performing the intended functions. The specific length of the elastomeric stimulators are not disclosed, however, the claimed range is a matter of simple design choice encompassing the range of standard bristles on a tooth brush. With respect to the limitations of claims 12-14, as previously noted, the structural limitations have been met by the prior art as described above. It appears that the functional limitations would come about by normal use of the modified device of Guiliani.

Response to Arguments

3. Applicant's arguments with respect to claims 1-5, 9, and 12-14 have been considered but are moot in view of the new ground(s) of rejection. The modified Guiliani device has met the claimed limitations, and the motivation for combining of the references has been drawn from the references themselves. As mentioned above, the structural limitations have been met, therefore the functions of intended use are capable of occurring based on use of the modified Guiliani device.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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October 15, 2004



**JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700**

10/15/04